

FILED 10 NOV 01 11:22 USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

ANTHONY TORREZ,

Civil No. 07-1217-PK

Petitioner,

v.

ORDER

GUY HALL, Superintendent,  
Two Rivers Correctional Institution,

Respondent.

Harold P. DuCloux, III  
Assistant Federal Public Defender  
101 S.W. Main Street, Suite 1700  
Portland, Oregon 97204

Attorney for Petitioner

John R. Kroger  
Attorney General  
Lynn David Larsen  
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Attorneys for Respondent

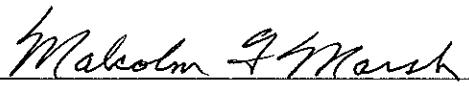
MARSH, Judge.

Magistrate Judge Paul Papak filed his Findings and Recommendation on September 9, 2010. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Petitioner has filed timely objections. I have, therefore, given the file of this case a *de novo* review. I find no error. Accordingly, I ADOPT the Findings and Recommendation #52 of Magistrate Judge Papak. Petitioner's request for an evidentiary hearing is denied on the basis that petitioner's free-standing claim of actual innocence is not properly before the court. Finally, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. See 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this   1   day of November, 2010

  
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Malcolm F. Marsh  
United States District Judge